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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/557,889	04/21/2000	Marcel Hofsaess	4965-000104	8394

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EXAMINER

VORTMAN, ANATOLY

ART UNIT PAPER NUMBER

2835

DATE MAILED: 05/10/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application N .

09/557,889

Applicant(s)

HOFSAESS, MARCEL

Examiner

Anatoly Vortman

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 April 2002.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 and 15-19 is/are rejected.
- 7) ☒ Claim(s) 13 and 14 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 7.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

1. The submission of the amendment filed on 04/08/02 is acknowledged. At this point claims 1 and 12-14 have been amended, and new claims 16-19 have been added. Thus, claims 1-19 are pending in the instant application.

#### ***Claim Rejections - 35 USC § 112***

2. Claim 19 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 19 recites the limitation "the guide element". There is insufficient antecedent basis for this limitation in the claim.

#### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 15 and 18, are rejected under 35 U.S.C. 102(b) as being anticipated by Wehl.

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Regarding claim 15, Wehl disclosed (Fig. 1-7), a switching mechanism (Fig. 7) attached to a guide element (7), the protective sheath (2) completely enclosing the switching mechanism so that a portion of the guide element (7) is exposed (Fig. 1).

Regarding claim 18, Wehl disclosed a device (Fig. 1-7), comprising an electrical load (column 1, lines 25-28), a housing part (2), an external terminal (8) for supplying electricity to said load, a cavity provided in said housing part (2) for receiving a housingless temperature-dependent switching mechanism (Fig. 7), said switching mechanism protecting said load from overtemperature and overcurrent, respectively (column 1, lines 25+), a first (6) and a second (13) countercontact being fixedly provided in said cavity, said first countercontact (6) being electrically connected to said load and said second countercontact (13) being electrically connected to said external terminal (8), said cavity being configured to receive said housingless switching mechanism (Fig. 7) such that said switching mechanism when being below its response temperature is in direct electrical contact with said first (6) and second (13) countercontacts for electrically interconnecting said first (6) and second (13) countercontact with each other (Fig. 1), wherein said switching mechanism being configured as a lossproof unit comprising a bimetallic element (9) and a movable contact element (13) that coacts with one (6) of the two countercontacts, and wherein said switching mechanism comprises a spring element (11) that is held in lossproof fashion on the contact element (13) that coacts with the other (6) of the two countercontacts.

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5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-12, and 17, are rejected under 35 U.S.C. 103(a) as being unpatentable over US/3,443,259 to Wehl et al., (Wehl).

Regarding claims 1 and 16, Wehl disclosed a device (Fig. 1-7), comprising an electrical load (column 1, lines 25-28), a housing part (2), an external terminal (8) for supplying electricity to said load, a cavity provided in said housing part (2) for receiving a housingless temperature-dependent switching mechanism (Fig. 7), said switching mechanism protecting said load from overtemperature and overcurrent, respectively (column 1, lines 25+), a first (6) and a second (13) countercontact being fixedly provided in said cavity, said first countercontact (6) being electrically connected to said load and said second countercontact (13) being electrically connected to said external terminal (8), said cavity being configured to receive said housingless switching mechanism (Fig. 7) such that said switching mechanism when being below its response temperature is in direct electrical contact with said first (6) and second (13) countercontacts for electrically interconnecting said first (6) and second (13) countercontact with each other (Fig. 1), but did not disclose that said housing part is designed to accommodate both: the electrical load and the switching mechanism, rather Wehl disclosed that said switch has it's own housing (2) and is used for protective purposes with small electric motors or home appliances (column 1, lines 25+), which inherently have their own housings.

It would have been obvious to a person of ordinary skill in the thermal switch art at the time the invention was made to combine the load (i.e. motor or appliance) and said switching mechanism in a single housing as an obvious design choice in order, for example to enhance the heat exchange between the load and the switching mechanism, since it has been held that forming in one piece an article (i.e. a single housing for the load and the switching mechanism) which has formerly been formed in two pieces (i.e. separate housings for the load and the switching mechanism) and put together involves only routine skill in the art. *Howard v. Detroit Stove Works*, 150 U.S. 164 (1893).

Regarding claims 16 and 17, Wehl additionally disclosed a cover (formed by members (7 and 4)) that sealingly closes off the cavity and one of the contacts (6) is arranged on said cover, (Fig. 3).

Regarding claims 2 and 3, Wehl disclosed a cover (4, 7) that sealingly closes off the cavity after the switching mechanism has been set in place (Fig. 1).

Regarding claim 6, Wehl disclosed that said switching mechanism being configured as a lossproof unit comprising a bimetallic element (9) and a movable contact element (13) that coacts with one (6) of the two countercontacts.

Regarding claim 7, Wehl disclosed a spring element (11) that is held in lossproof fashion on the contact element (13) that coacts with the other (6) of the two countercontacts.

Regarding claims 8 and 9, Wehl disclosed that the switching mechanism is attached to a guide element (4) that is inserted together with the switching mechanism into the cavity, wherein said guide (4) acts as a cover and closes off the cavity in sealed fashion.

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Regarding claims 4, 5, 10, and 11, Wehl disclosed that one (6) of the two countercontacts is arranged on the cover (guide element) (4), (Fig. 3).

Regarding claim 12, Wehl disclosed (Fig. 8) that the bimetallic element (9') is configured as a bimetallic tongue that at its first end is attached to a guide element (7) being inserted together with the switching mechanism into the cavity, and at its free end carries the movable contact element.

### ***Allowable Subject Matter***

7. Claims 13 and 14 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: claim 13 recites “the spring element is configured as a spring tongue that at its first end is attached to a guide element ... and at its second end is joined to a first end of the bimetallic element”, and claim 14 recites “the spring element has retaining extension piece that is attached to a guide element”. The aforementioned recitations in combination with remaining limitations of the claims, are believed to render said claims 13 and 14 patentable over the art of record.

### ***Response to Arguments***

8. Applicant's arguments filed on 04/08/02 have been fully considered, but they are not persuasive. Regarding claim 18, contrary to the Applicant's statement that "Claim 13 which was indicated as presenting allowable subject matter, has been rewritten in independent form as new claim 18" (Page 4 of the amendment), the Examiner would like to direct the Applicant's attention to the fact that said claim 18 corresponds to previously rejected claims 6 and 7. No limitations from claim 13 have been included in claim 18.

The remaining arguments (regarding claims 1-12) are mute in view of the new grounds of rejection.

Regarding claim 15 no arguments have been presented.

### ***Conclusion***

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,



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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anatoly Vortman whose telephone number is 703-308-7824.

The examiner can normally be reached on 9:30-6:00, Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Darren Schuberg can be reached on 703-308-4815. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3431 for regular communications and 703-305-3432 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1782.

Anatoly Vortman  
Examiner  
Art Unit 2835

A.V.  
May 6, 2002

A handwritten signature in black ink, appearing to read 'A. Vortman', followed by a horizontal line extending to the right.